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7 JOY E. WEAVER,

Plaintiff,

v.

10 NICOLE KRUSE,

11 Defendant.

12 Case No. 5:22-cv-07103 EJD

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28 **ORDER TO SHOW CAUSE WHY
ACTION SHOULD NOT BE
REMANDED TO STATE COURT**

On October 31, 2022, Plaintiff Weaver brought this state-law unlawful detainer action against Defendant Kruse in the Superior Court of California for the County of Santa Clara seeking to evict Defendant from real property located in Mountain View. ECF No. 1 at 5. Defendant Kruse, appearing pro se, subsequently removed the action on November 14, 2022. ECF Nos. 1, 2.

A defendant may remove an action from state court to a federal court of original jurisdiction. 28 U.S.C. § 1441(a). Once a case is removed to federal court, the court has an independent obligation to satisfy itself that it has federal subject matter jurisdiction. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004). The removed action must be remanded back to state court “if at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c). Federal question jurisdiction under 28 U.S.C. § 1331 establishes original jurisdiction over a civil action that arises under the constitution, laws, or treaties of the United States. Federal courts also have original jurisdiction under 28 U.S.C. § 1332(a)(1) where there is complete diversity of citizenship and an amount in controversy in excess of \$75,000. “Federal question jurisdiction exists only when a federal question exists on the face of a well-pleaded complaint.” *ING Bank, FSB v. Pineda*, No. 12-cv-2418, 2012 WL 2077311, at * 1 (N.D. Cal. June 8, 2012). “[A]n actual or anticipated defense” does not confer federal jurisdiction. *Vaden v. Discover Bank*, 556

1 U.S. 49, 60 (2009). The removal statute is strictly construed against removal jurisdiction. . . . [and]
2 [t]he defendant bears the burden of establishing that removal is proper.” *Provincial Gov’t of*
3 *Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009).

4 Defendant Kruse bases removal on federal question jurisdiction pursuant to 28 U.S.C. §
5 1331. ECF No. 1 ¶¶ 5, 14. However, Plaintiff’s complaint alleges only unlawful detainer under
6 California law; it does not implicate a substantial question of federal law. *Id.* at 5 (“Complaint for
7 Unlawful Detainer”). In the Notice of Removal, Defendant argues that the complaint alleges a
8 federal cause of action and states that Plaintiff intends to violate Defendant’s protection under the
9 Tenant Protection Act of 2019 “in an effort to evade the rent cap.”¹ *Id.* ¶¶ 10–11, 14. Defendant
10 further provides that Plaintiff’s complaint “fails to allege compliance with the Civil Rights Act of
11 1968[] & Tenant Protection [A]ct of 2019” but Defendant provides no further detail as to these
12 allegations. *Id.* ¶ 6. Even if Plaintiff has a valid counterclaim or defense, however, neither provides
13 a basis for federal question jurisdiction. *Vaden*, 556 U.S. at 60 (“Federal jurisdiction cannot be
14 predicated on an actual or anticipated defense. . . . Nor can federal jurisdiction rest upon an actual
15 or anticipated counterclaim.”).

16 Moreover, Defendant does not allege that diversity jurisdiction exists under 28 U.S.C. §
17 1332(a)(1), as both parties appear to reside in California—and therefore are not diverse—and the
18 amount in controversy does not exceed \$75,000 because the face of the complaint states that the
19 damages do not exceed \$10,000. *See* ECF No. 1 at 5.

20 Based on the foregoing, the Court ORDERS Defendant Kruse to SHOW CAUSE as to why
21 this action should not be remanded to state court. Defendant shall respond to this order in writing
22 no later than **January 17, 2023**. Failure to respond to the Court’s order will result in remand of this
23 case to Santa Clara County Superior Court.

24 Finally, the Court informs Defendant that the Federal *Pro Se* Program at the San Jose
25 Courthouse provides free information and limited-scope legal advice to pro se litigants in federal
26 civil cases. Help is provided by appointment and on a drop-in basis. The program is located in the

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28 ¹ Defendant cites to the “federal Tenant Protection [A]ct of 2019” which the Court understands as
referring to the California Tenant Protection Act of 2019.

1 United States Courthouse at 280 South 1st Street in San Jose, and parties may make appointments
2 by calling the program's staff attorney, Mr. Haohao Song, at 408-297-1480.

3 **IT IS SO ORDERED.**

4 Dated: December 29, 2022



5 EDWARD J. DAVILA
6 United States District Judge

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United States District Court
Northern District of California